

**B. Inquiry Into Interconnection and Resale Obligations of Commercial Mobile Radio Service Providers**

**1. Introduction and Background**

121. In the *CMRS Second Report*, we concluded that the record was inadequate to decide whether to adopt generic rules requiring CMRS providers to provide interstate interconnection to other mobile service providers.<sup>213</sup> Thus, a principal objective of this Notice of Inquiry is to explore whether interstate interconnection requirements would foster the interconnectivity and growth of diverse and competitive mobile services. A second objective of this inquiry is to examine whether regulatory symmetry in CMRS interconnection obligations, subjecting competitors providing similar services to similar interconnection rules and conditions, would further congressional and Commission objectives. This second objective also includes an examination of the extent to which the establishment of interstate interconnection obligations applicable to CMRS providers would promote or hinder realization of regulatory symmetry for CMRS.<sup>214</sup> Thus, taking these objectives together, we seek comment on whether it is necessary for our regulations to require CMRS providers to provide interstate interconnection to other CMRS providers, or whether we can anticipate that the CMRS marketplace will develop in such a way that the establishment of interconnection obligations applicable to CMRS providers is not necessary.

122. As a general matter, we request that commenters, in addressing the specific issues and questions we raise in the following sections, frame their analyses with reference to the broader issues raised by CMRS interconnection. We believe that these broader issues include the following: (1) How can the Commission foster economic growth through the decisions we make regarding CMRS interconnection requirements? (2) What types of CMRS interconnection obligations, if any, may be necessary to ensure that as many potential users as possible will have access to the public switched network? (3) What are the potential costs and benefits of any interconnection obligations raised in this NOI or recommended by commenters? (4) How should the financial and technological capabilities of CMRS providers influence our decisions on these issues? (5) To what extent would it be advisable for the Commission to conclude that a gradual implementation of interconnection obligations will best serve the interests of CMRS providers,

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<sup>213</sup> A pending Petition for Reconsideration of the *CMRS Second Report* raises the issue of whether the Commission is required, before August 10, 1994, to adopt generic rules ordering CMRS providers to offer interconnection to other CMRS providers. Petition for Reconsideration of CMRS Second Report filed by National Cellular Resellers Association (NCRA), May 19, 1994; *see also* Petition for Reconsideration of CMRS Second Report filed by Cellular Service, Inc. and ComTech, Inc., May 19, 1994. Until any such generic rules are adopted, we will, of course, entertain any requests to order interconnection pursuant to Section 332(c)(1)(B) on a case-by-case basis.

<sup>214</sup> *CMRS Second Report*, 9 FCC Rcd at 1420.

in particular, new and small CMRS providers, and their customers? Any interconnection obligations that we might adopt for CMRS providers should be the most efficient means of implementing fair, reasonable, and non-discriminatory interconnection, consistent with the provisions of Sections 201 and 202 of the Act.<sup>215</sup> Commenters should also address the extent to which any interconnection obligations of CMRS providers that we may ultimately adopt after notice and comment rulemaking in this proceeding should be harmonized with equal access interconnection requirements.

123. We are also initiating this inquiry to explore resale obligations for CMRS providers. The Commission has a longstanding prohibition against restrictions on resale service,<sup>216</sup> which the Commission has also extended to cellular service.<sup>217</sup> The Commission later refined its cellular resale requirement by eliminating mandatory resale to a facilities-based competitor in the same cellular market after the competitor has been licensed for five years.<sup>218</sup> We announced in the *CMRS Second Report* that we would issue a Notice of Inquiry to explore whether we should require all CMRS licensees to resell their services to non-facilities based competitors in the licensee's service area as well as to facilities-based competitors that have held licenses less than five years. The *CMRS Second Report* concluded that we would continue our resale policy with respect to cellular providers during the pendency of this proceeding.<sup>219</sup> In this NOI we seek comment on whether some or all CMRS service providers other than cellular licensees should be required to resell service to facilities-based or non-facilities-based CMRS competitors and what limitations, if any, should be placed on that requirement.

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<sup>215</sup> 47 U.S.C. §§ 201, 202.

<sup>216</sup> The definition of resale service that we have applied is an "activity wherein one entity subscribes to the communication services and facilities of another entity and then reoffers communications service to the public (with or without adding value) for profit." See *Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261, 271 (1976) (*Resale and Shared Use Decision*), modified on other grounds, *Resale and Shared Use Reconsideration Order*, 62 FCC 2d 588 (1977), *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978), *cert. denied*, 439 U.S. 875 (1978). See also *Resale and Shared Use of Common Carrier Domestic Public Switched Network Services*, 83 FCC 2d 167, 193 (1980) (*Resale of Switched Services*).

<sup>217</sup> See *Cellular Order*, 86 FCC 2d at 511.

<sup>218</sup> See *Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies*, CC Docket No. 91-33, Report and Order, 7 FCC Rcd 4006, 4009 (1992) (*Cellular Resale Order*). See also 47 CFR § 22.914, Provision of resale capacity and cellular service to subscribers.

<sup>219</sup> See *CMRS Second Report*, 9 FCC Rcd at 1500.

## 2. General Legal and Policy Issues

124. As explained in our NPRM regarding equal access, the Commission's authority to impose interstate interconnection obligations on any common carrier derives from Section 201(a) of the Act.<sup>220</sup> Thus, if the Commission determines that imposing interconnection obligations would be in the public interest, we have the authority to order CMRS providers to establish physical interconnection with other carriers. In this Notice of Inquiry, we begin with a threshold question of whether we need to impose interstate interconnection obligations on CMRS providers. In our previous decisions to impose interstate interconnection obligations on LECs, we have reasoned that such obligations are necessary to ensure access to bottleneck facilities and the public switched network.<sup>221</sup> We have recognized, however, that CMRS providers do not have control over bottleneck facilities.<sup>222</sup> Also, the interconnection obligations that we have imposed on the LECs ensure that all CMRS providers can have access to the public switched network.<sup>223</sup> We believe that CMRS interconnection with the public switched network is an essential component in the establishment and growth of CMRS offerings and that the ubiquity of such interconnection will facilitate universal deployment of diverse CMRS services to customers.<sup>224</sup>

125. In approaching the question of whether there is a need to propose rules regarding interstate interconnection obligations applicable to CMRS providers, we seek comment on the following general questions. First, is there a basis for us to conclude that, given our view that CMRS providers generally do not control bottleneck facilities, we should refrain from imposing interconnection obligations on CMRS providers, or is there a basis for us to conclude that there are policy considerations that would warrant imposition of interconnection obligations even in the absence of bottleneck facilities? In addressing this question, commenters should assess the extent to which it may be reasonable to conclude that the CMRS marketplace may function as an effective regulator of interconnection arrangements if CMRS providers lack market power

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<sup>220</sup> See Section II.B.2., ¶31.

<sup>221</sup> See, e.g., *Interconnection Order*, 2 FCC Rcd at 2913-16.

<sup>222</sup> *CMRS Second Report*, 9 FCC Rcd at 1499.

<sup>223</sup> See Section 20.11(a) of the Commission's Rules, providing in pertinent part, that "[a] local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier . . . ." 47 CFR § 20.11(a). This rule, adopted in the *CMRS Second Report*, is scheduled to take effect on July 18, 1994.

<sup>224</sup> See *CMRS Second Report*, 9 FCC Rcd at 1499. Indeed, one element of the statutory definition of CMRS is that it be interconnected with the public switched network. In addition, the *CMRS Second Report* defines the term "public switched network" broadly so that it also includes at least some CMRS providers. *Id.* at 1436-37.

or control of bottleneck facilities.<sup>225</sup> Second, would it be a reasonable exercise of our discretion under Section 201 of the Act to conclude that any further examination of whether to impose interconnection obligations on CMRS providers may be premature at this stage in the development of the CMRS marketplace? Commenters should identify factors regarding the nature of the CMRS marketplace that would support such a conclusion. If we conclude that it would be premature to establish CMRS interconnection obligations, should we examine the potential need for CMRS interconnection obligations as part of our efforts to monitor the development of the CMRS marketplace?<sup>226</sup>

126. As noted in the preceding paragraph, we are seeking comment on the alternative view that our general interconnection policies would justify the imposition of interconnection obligations on CMRS providers. Commenters should address reasons why it would be appropriate for the Commission to exercise our discretion to establish interconnection obligations under Section 201 of the Act while the CMRS marketplace is undergoing a period of rapid development. We ask commenters to focus on whether interconnection requirements would advance competition and encourage efficiencies and lower rates in the mobile services marketplace. We do not wish to encourage a situation where most traffic from one CMRS service subscriber must pass through a LEC switch for its traffic to reach a subscriber to another CMRS service, if such routing would be inefficient or unduly costly.<sup>227</sup> We seek comment on whether the failure to impose new interconnection obligations might unnecessarily restrict the capability of any CMRS providers (particularly the newly classified CMRS service providers) to interconnect with the facilities of other CMRS providers. We also seek comment on whether any class of CMRS providers should be required to provide interconnection to all CMRS providers<sup>228</sup> or only to certain other classes of CMRS providers. Should the Commission address such matters by declaratory rulings resolving particular cases, or by issuing rules, either specific rules or rules based on a general standard of reasonableness?<sup>229</sup>

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<sup>225</sup> Although the *CMRS Second Report* found that CMRS providers do not control bottleneck facilities, we did not reach any conclusion about whether cellular providers have market power. See *CMRS Second Report*, 9 FCC Rcd at 1470.

<sup>226</sup> The Budget Act requires the Commission to monitor the state of competition in the CMRS marketplace. Communications Act § 332(c)(1)(C), 47 U.S.C. § 332(c)(1)(C). In addition, we will shortly issue a Notice of Proposed Rulemaking to propose means by which we will monitor the cellular marketplace.

<sup>227</sup> See *CMRS Second Report*, 9 FCC Rcd at 1499.

<sup>228</sup> For a discussion of whether CMRS providers would be required to provide interconnections to PMRS providers or individuals, see para. 129, *infra*.

<sup>229</sup> See, e.g., *Cellular Interconnection Order*, 4 FCC Rcd at 2374, *aff'g Interconnection Order*, 2 FCC Rcd 2910 (1987) (Commission adopted policy statement rather than specific rules because of existence of a variety of interconnection arrangements and system designs). Cf.

127. The next set of questions we invite commenters to address involves whether, if we ultimately require interconnection, different kinds of interconnection obligations should apply to different kinds of CMRS providers, *i.e.* on a service-by-service basis, or whether similar obligations should be placed on all CMRS providers. Further, we seek comment on whether, if we do not impose uniform interconnection obligations on all CMRS providers, any technological factors might affect whether particular classes of CMRS services should have interconnection obligations, while other classes should not. Commenters are also invited to propose other factors the Commission might use to determine whether to impose interconnection obligations on various CMRS providers. For example, should interconnection obligations reflect technological capability (characteristics unique to each service), capacity or size of CMRS providers,<sup>230</sup> start-up or development costs of interconnection, and subscriber demand? Commenters that propose different interconnection obligations for various classes of CMRS providers should also discuss how this would affect achievement of our goals of fostering the development of diverse mobile services and non-discriminatory access to mobile services. Since the establishment of different interconnection obligations for different classes of CMRS providers would, by definition, result in a lack of symmetry in the regulation of CMRS providers, commenters should address the issue of whether the benefits that may be realized from differing interconnection obligations outweigh the costs that might result from this lack of regulatory symmetry.

128. In addition, we invite comment on whether we should establish any interstate interconnection obligations applicable to CMRS resellers using their own switches. We note that cellular resellers have requested that the Commission impose interconnection obligations on cellular carriers so cellular resellers can use their own switch to provide certain technologically advanced features to their customers.<sup>231</sup> Commenters should address whether it would be appropriate to require CMRS resellers that employ their own switch to offer interconnection to other CMRS providers or other customers.

129. Finally, we seek comment on whether we need to consider applying the foregoing considerations with regard to interstate interconnection to private carriers or individuals. In the *CMRS Second Report*, we concluded that if a private mobile radio service (PMRS) licensee shows that a LEC provides interconnection to CMRS licensees while denying interconnection of the same type and at the same rate to PMRS licensees, the carrier has the burden of establishing why its refusal would not constitute denial of a reasonable request for service in

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*CMRS Second Report*, 9 FCC Rcd at 1498.

<sup>230</sup> For instance, should interconnection obligations be imposed on companies having annual revenues of more than a certain amount from regulated telecommunications operations, but not on smaller companies?

<sup>231</sup> See Ex Parte Letter in GN Docket No. 93-252, from David Gusky, Executive Director, NCRA (Jan. 5, 1994).

violation of Section 201(a) of the Act.<sup>232</sup> We seek comment on whether CMRS providers should be under a comparable obligation.

### **3. Interconnection Facility Issues**

#### **a. Forms of Interconnection, Specific Facilities**

130. We seek further comment on the specific kinds of interconnection that might be appropriate, in the event we impose interconnection obligations, to require a CMRS provider to offer to other carriers and customers.<sup>233</sup> We inquire whether the nature of the facilities that CMRS providers employ or will employ, and the ways they currently connect or plan to connect to the public switched network through LEC facilities, should affect the kind of interconnection that CMRS carriers may be required to provide. Specifically, do some CMRS providers use types of facilities that are different from the facilities LECs or other CMRS providers use to offer interconnection, or is it likely that they will do so in the future? If so, what is the nature of these differences, and should the Commission establish different interconnection obligations due to any differences in interconnection facilities?<sup>234</sup>

#### **b. Structure for Rates, Terms, and Conditions**

131. We stated in the *CMRS Second Report* that if we require CMRS providers to furnish interconnection, the statutory provisions added by the Budget Act clearly preempt state regulation of the rates for such interconnection.<sup>235</sup> We did not reach, however, the issue of whether we should also specify a structure for interconnection rates, terms, and conditions if we establish CMRS interconnection obligations.<sup>236</sup> In requiring that the LECs provide reasonable, uniform interconnection to CMRS providers, the *CMRS Second Report* also made the LECs

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<sup>232</sup> *CMRS Second Report*, 9 FCC Rcd at 1500-01.

<sup>233</sup> See Section III.A.1, ¶105.

<sup>234</sup> See Section III.B.2., ¶127.

<sup>235</sup> *CMRS Second Report*, 9 FCC Rcd at 1500, citing Communications Act, § 332(c)(3), 47 U.S.C. § 332(c)(3). For further discussion of preemption issues, see Section III.B.5, *infra*.

<sup>236</sup> Pursuant to the *CMRS Second Report*, 9 FCC Rcd at 1499, we are addressing elsewhere in this *Notice* particular proposals for LEC tariffs, specific tariff rate elements, the possible structure for these elements, and alternative requirements to ensure reasonable charges for interconnection furnished to CMRS providers. See Section III.A, *supra*.

subject to several requirements, including mutual compensation,<sup>237</sup> and the establishment of reasonable charges for interstate interconnection provided to CMRS licensees. The *CMRS Second Report* also provided that these changes should not vary from the charges for interconnection provided by LECs to other mobile radio service providers.<sup>238</sup> Commenters should address whether CMRS providers should be subject to a requirement of mutual compensation vis-a-vis other CMRS providers. We also invite comment on what objectives we should pursue in addressing these issues related to interconnection rate structure and whether any pricing rules are necessary. Specifically, commenters should address whether we should require CMRS providers to tariff the rates for their interconnection arrangements. If we do not require tariffs, should we base our decision on an exercise of our forbearance authority under Section 332(c)(3) of the Act or some other theory?<sup>239</sup>

132. In defining LEC interconnection obligations to CMRS providers, we have determined that "reasonable interconnection" should include offering the type of interconnection chosen by a carrier if it is technically feasible and economically reasonable, and the provision of that interconnection within a reasonable time.<sup>240</sup> We also have previously concluded that dissimilar charges for similar services may be unjustly discriminatory in violation of Section 202(a) of the Act, depending on the facts of a particular case.<sup>241</sup> We seek comment on whether such interconnection standards should apply to CMRS providers with regard to specific terms, including, for example, the rates charged to different CMRS providers, the form of interconnection requested, the time within which CMRS providers should be required to respond to interconnection requests, and the interconnection system design.

### c. Interoperability Issues

133. In the *CMRS Second Report*, we said we would address some of the comments concerning interoperability and interconnection in an NOI.<sup>242</sup> For example, MCI contended that interconnection obligations should include providing interexchange carriers and others with

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<sup>237</sup> *CMRS Second Report*, 9 FCC Rcd at 1498. Under mutual compensation, LECs are required to compensate CMRS providers for the reasonable costs they incur in terminating traffic that originates on LEC facilities, and CMRS providers are required to provide such compensation to LECs in connection with mobile-originated traffic terminating on LEC facilities. *Id.*

<sup>238</sup> *Id.* at 1498.

<sup>239</sup> 47 U.S.C. 332(c)(1)(A).

<sup>240</sup> *CMRS Second Report*, 9 FCC Rcd at 1498.

<sup>241</sup> *Interconnection Order*, 2 FCC Rcd at 2914.

<sup>242</sup> *CMRS Second Report*, 9 FCC Rcd at 1499.

access to mobile location data bases and to routing information.<sup>243</sup> With regard to those network services by LECs, we noted that these issues are being explored in the Commission's intelligent network proceeding.<sup>244</sup>

134. First, because MCI's comments deal with enabling customers to use intelligent network services wherever they travel, some of the issues appear to relate to questions of interconnection by CMRS providers. Some commenters had no objection to the MCI proposal if it permitted mobile service providers to send messages to their mobile data bases solely to enable the identification and location of customers.<sup>245</sup> We invite comment on the forms of interconnection and kinds of facilities and equipment that would be required to effectuate MCI's proposals. For example, what interconnection obligations may be necessary to ensure that CMRS carriers provide to end users of various CMRS services the kinds of information contemplated by MCI, *i.e.*, Home Location Register and Visited Location Register?

135. On the other hand, some commenters objected to the MCI proposal, contending that it would constitute an unlawful deprivation of property rights, because it would allow access to confidential proprietary information that cellular carriers, for example, create regarding their customers.<sup>246</sup> Commenters should address the legal and policy issues raised by MCI's request.

136. In addition, matters of interoperability standards that would promote compatible equipment and ensure that customers would have the ability to "roam" from one licensee's service area to another are being addressed in another separate proceeding.<sup>247</sup> We believe, however, that at least one of the issues relates to this proceeding and warrants attention here. For example, what kinds of interconnection obligations or facilities may be necessary to implement new or modified interoperability standards? We seek comment on this and any other matters of interoperability that commenters believe we should examine in this inquiry

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<sup>243</sup> *Id.* at 1499-1500, *citing* MCI Comments, GN Docket No. 93-252, filed Nov. 8, 1993, at 10.

<sup>244</sup> *Id.* at 1500 n.482, *citing* In the Matter of Intelligent Networks, CC Docket No. 91-346, Notice of Proposed Rule Making, 8 FCC Rcd 6813 (1993)(*IN Notice*).

<sup>245</sup> Pacific Bell and Nevada Bell Telecommunications Corporation Reply Comments, GN Docket No. 93-252, filed Nov. 23, 1993, at 2-3.

<sup>246</sup> Pactel Corporation Reply Comments, GN Docket No. 93-252, filed Nov. 23, 1993, at 15-16; *see also* Southwestern Bell Corporation Reply Comments, GN Docket No. 93-252, filed Nov. 23, 1993, at 9-10.

<sup>247</sup> Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Further Notice of Proposed Rule Making, FCC No. 94-100, ¶ 57 (adopted Apr. 20, 1994; released May 20, 1994) (*Transition Further Notice*).



proceeding.

#### 4. CMRS Carrier Resale Obligations

137. We seek comment regarding whether we should propose rules to place the resale obligations that apply to cellular licensees on all CMRS providers or any particular class of CMRS providers. In refining our resale policy with respect to cellular carriers, we have sought to foster certain goals such as establishing nationwide availability of cellular service, and promoting efficient allocations of spectrum resources and interbrand competition.<sup>248</sup> Similarly, the *CMRS Second Report* set forth general policy guidelines that focus on fostering competition and economic growth in the mobile marketplace.<sup>249</sup> There we said that we "interpret the elements of the commercial mobile radio service definition in a manner that ensures that competitors providing identical or similar services will participate in the marketplace under similar rules and regulations."<sup>250</sup> Thus, we invite comment on whether, in view of the economic objectives we seek to promote, regulatory symmetry requires unrestricted resale obligations for all CMRS services. More specifically, we request comment on how resale obligations would assist in the development of CMRS services. For example, will resale obligations allow new entrants in a market to offer service to the public more quickly because they could resell another service while building their own facilities?<sup>251</sup> We also seek discussion of unique features for the foregoing services that might support retaining a resale obligation only for cellular service.

138. We have found that a strong resale market for cellular service fosters competition.<sup>252</sup> We seek comment identifying those CMRS services in which a resale market is likely to develop, such as wide area SMR and PCS. We also seek comment on whether our objectives for CMRS either require or would be promoted by resale obligations similar to those now in effect for cellular service. In addition, commenters should address whether the Act can be construed to require or whether Commission policy should require some or all CMRS providers to allow customers of other CMRS providers to use their service on a roaming basis. If the Commission does not require the technical compatibility of equipment,<sup>253</sup> such a roaming

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<sup>248</sup> See *Cellular Resale Order*, 7 FCC Rcd at 4007.

<sup>249</sup> See 9 FCC Rcd at 1420.

<sup>250</sup> *Id.*

<sup>251</sup> It is possible that a new PCS licensee may wish to resell cellular service by providing subscribers with a handset that is compatible with cellular and PCS technology, while the PCS licensee is constructing its own PCS facilities. See e.g. Ex Parte Letter in GN Docket No. 90-314, from Alan F. Ciamporzero, Senior Counsel, Pacific Telesis Group (May 12, 1994).

<sup>252</sup> See *Cellular Resale Order*, 7 FCC Rcd at 4008.

<sup>253</sup> See Section III.B.3, ¶ 136.

requirement could apply only in situations where the customer's equipment is compatible with the CMRS system where the customer roams.

139. If we ultimately impose resale obligations on some or all classes of CMRS providers, we seek comment on whether our current cellular policy limiting a facilities-based competitor's mandatory right to resale to five years should be applied to those CMRS providers. In the *Cellular Resale Order* we limited to five years the obligation of a cellular licensee to resell to its facilities-based competitor. We reasoned that unrestricted resale can harm competition in the cellular industry by limiting facilities-based competition.<sup>254</sup> We seek comment on whether the same analysis would be valid for other services or some other policy would be more appropriate. For example, should there be unrestricted resale for an unlimited time? Or should the Commission restrict the resale obligation to a limited period for some or all CMRS services?

140. Second, we ask whether, for the various CMRS geographic market areas to develop expeditiously and meet our policy objectives, cellular providers should be exempt from providing resale to facilities-based CMRS competitors in their service areas even during the first five years that these competitors hold their licenses? Commenters should address the standards the Commission might use to identify the services that compete with cellular service.<sup>255</sup> Also, would any overlap in service areas between competitive service providers be sufficient to restrict resale obligations, or should the Commission establish some threshold amount of overlap and, if so, what threshold amount should we choose?

141. Lastly, we apprise prospective commenters that, in considering resale restrictions, the Commission must eventually determine whether the restrictions are just and reasonable under Section 201(b) of the Act; and in doing so, must weigh the harm to the public posed by such restrictions against the potential benefits to the public.<sup>256</sup> We must also make a similar determination under Section 202(a) of the Act. Thus, it is important to develop a complete record regarding CMRS services, including the extent to which exemptions or restrictions affect competition in the marketplace.

## 5. Preemption Issues

142. In the *CMRS Second Report* we concluded that we should preempt state and local

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<sup>254</sup> See *Cellular Resale Order*, 7 FCC Rcd at 4008.

<sup>255</sup> See, e.g., *Transition Further Notice*, at ¶¶ 12-13 (Commission tentatively concluded that services are substantially similar if they are offered in competition to customers with substantially similar needs and demands).

<sup>256</sup> See *Resale and Shared Use Decision*, 60 FCC 2d at 283. See also *Hush-a-Phone Corp. v. U.S.*, 238 F.2d 266 (D.C. Cir. 1956).

regulation of the kinds of LEC interconnection to which CMRS providers are entitled.<sup>257</sup> We found that separate interconnection arrangements for interstate and intrastate CMRS are not feasible and that state regulation of the right to and type of interconnection "would negate the important federal purpose of ensuring CMRS interconnection to the interstate network."<sup>258</sup> We note that the Budget Act preempts state regulation of CMRS rates and entry,<sup>259</sup> but specifically permits state regulation of other terms and conditions of CMRS providers.<sup>260</sup> Our preemption applied only to LEC obligations to provide the type of interconnection reasonably requested by all CMRS providers.<sup>261</sup> We therefore inquire as to whether the conclusion we reached in the *CMRS Second Report* regarding LECs should extend to the kinds of interconnection furnished by CMRS providers to other carriers and other service providers.

143. Our conclusion in the *CMRS Second Report* was premised on the principle that the Commission may exercise preemption over state regulation when interstate and intrastate services are inseparable and the state regulations would thwart or impede federal policies.<sup>262</sup> We have relied upon that principle and the supporting judicial authority to justify our preemption of other state action related to interconnection.<sup>263</sup> We believe that the foregoing legal authority would support preemption of state regulation of interconnection arrangements by CMRS providers, but we invite comment on this issue. In particular, if we decide not to impose interconnection obligations on some or all CMRS providers, should we preempt any state from imposing such obligations? With respect to state jurisdiction over the intrastate interconnection rates charged by CMRS providers, the *CMRS Second Report* determined that the Budget Act

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<sup>257</sup> See *CMRS Second Report*, 9 FCC Rcd at 1498.

<sup>258</sup> *Id.*

<sup>259</sup> A state may petition the Commission for authority to regulate rates for any commercial mobile radio service. See Communications Act, § 332(c)(3), 47 U.S.C. § 332(c)(3). See also *CMRS Second Report*, 9 FCC Rcd at 1504-07.

<sup>260</sup> See Communications Act, § 332(c)(3), 47 U.S.C. § 332(c)(3).

<sup>261</sup> See also *CMRS Second Report*, 9 FCC Rcd at 1504-07.

<sup>262</sup> See *id.* at 1498, n.474, citing *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 375 n.4 (1986); *Maryland Pub. Serv. Comm'n v. FCC*, 909 F.2d 1510 (D.C. Cir. 1990); *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); *Illinois Bell Tel. v. FCC*, 883 F.2d 104 (D.C. Cir. 1989); *National Ass'n of Reg. Util. Comm'ners v. FCC*, 880 F.2d 422 (D.C. Cir. 1989) (*NARUC II*); *Public Util. Comm'n of Texas v. FCC*, 886 F.2d 1325 (D.C. Cir. 1989); *North Carolina Util. Comm'n v. FCC*, 552 F.2d 1036 (4th Cir.) (*NCUC I*), *cert. denied*, 434 U.S. 874 (1977); *North Carolina Util. Comm'n v. FCC*, 537 F.2d 787 (4th Cir.) (*NCUC II*), *cert. denied*, 429 U.S. 1027 (1976).

<sup>263</sup> *Interconnection Order*, 2 FCC Rcd at 2912-13.

preempts any state regulation of CMRS interconnection rates.

#### IV. CONCLUSION

144. We tentatively conclude that, in concept, equal access is in the public interest. Equal access promotes the important objectives of customer choice and enhances competition in the interexchange market. Based on the record before us, we propose to impose equal access obligations on cellular carriers, and seek comment on whether the Commission should impose equal access obligations on any other CMRS provider. We seek comment on the proposed criteria we identify for assessing whether we should extend this obligation to other CMRS providers. We also seek comment on how we should define the equal access obligation in the CMRS marketplace if we decide to implement an equal access requirement. We also seek comment on whether we should impose a tariffing requirement or retain the requirement that LEC interconnection be provided to CMRS providers pursuant to good faith contractual negotiations. We seek further comment on whether in lieu of a tariffing obligation, we should require LECs to meet certain additional requirements to protect against unreasonably discriminatory interconnection arrangements for new market entrants. Finally, we begin an inquiry into issues relating to interconnection among CMRS providers. We propose to gather information on technical developments concerning interconnection protocols, procedures, and facilities, and to explore the significance of these developments in the environment of CMRS. We seek comment on the appropriate role of Commission regulation to foster interconnection and competition between new services in the mobile telecommunications marketplace, including whether to require CMRS providers to resell their services to facilities-based and non-facilities based competitors.

#### V. PROCEDURAL MATTERS

##### A. *Ex Parte Rules*

145. This is a non-restricted notice and comment rule making proceeding and inquiry. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules.<sup>264</sup>

##### B. *Regulatory Flexibility Act*

146. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.* (1981), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of the policies and rules proposed in this Notice on small entities. The IRFA is contained in Appendix B to this Notice. The Secretary shall cause a copy of this Notice, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

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<sup>264</sup> See generally, Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206(a).

**C. Authority**

147. This action is taken pursuant to Sections 1, 4(i), 4(j), 201, 202, 208, 332, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. §§ 154(i), 201, 202, 208, 332, and 403.

**D. Further Information**

148. For further information regarding this *Notice*, contact Judy Argentieri or Barbara Esbin at (202) 418-1520 (Common Carrier Bureau, Tariff Division) or Nancy Boocker or David Siehl at (202) 418-1300 (Common Carrier Bureau, Mobile Services Division).

**VI. ORDERING CLAUSES**

149. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described above, and that COMMENT IS SOUGHT on these proposals.

150. IT IS FURTHER ORDERED that NOTICE IS HEREBY GIVEN of the inquiry described above, and that COMMENT IS SOUGHT on the questions raised in the inquiry.

151. IT IS FURTHER ORDERED that the petition for rule making filed by MCI Telecommunications Corporation IS GRANTED.

152. IT IS FURTHER ORDERED that the motion to accept late filed comments in RM-8012 filed by Telephone and Data Systems, Inc. and United States Cellular Corporation IS GRANTED.

**153. IT IS FURTHER ORDERED** that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, comments SHALL BE FILED with William F. Caton, Acting Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before **August 30, 1994**, and reply comments SHALL BE FILED with the Secretary on or before **September 29, 1994**. To file formally in this proceeding, parties must file an original and five copies of all comments, reply comments, and supporting comments. Parties wishing each Commissioner to receive a personal copy of their comments must file an original plus nine copies. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, the International Transcription Services, Inc., Suite 140, 2100 M Street, N.W. Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

**FEDERAL COMMUNICATIONS COMMISSION**

**William F. Caton**  
**Acting Secretary**

## **APPENDIX A**

### **PARTIES FILING COMMENTS IN GN DOCKET NO. 93-252**

#### ***Party (and Short Title)***

Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc.  
(AMT/DSST)  
Aeronautical Radio, Inc. (ARINC)  
AllCity Paging, Inc. (AllCity)  
American Mobile Telecommunications Association, Inc. (AMTA)  
American Petroleum Institute (American Petroleum)  
Ameritech  
AMSC Subsidiary Corporation (AMSC)  
Arch Communications Group, Inc. (Arch)  
Association of American Railroads (AAR)  
Association of Public-Safety Communications Officials-International, Inc. (APCO)  
Bell Atlantic Companies (Bell Atlantic)  
BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., and  
Mobile Communications Corporation of America (BellSouth)  
Cellular Telecommunications Industry Association (CTIA)  
Celpage, Inc., Network USA, Denton Enterprises, Copeland Communications & Electronics,  
Inc. and Nationwide Paging (Celpage)  
CenCall Communications Corporation (CenCall)  
Century Cellunet Inc. (Century)  
Comcast Corporation (Comcast)  
Corporate Technology Partners (CTP)  
Cox Enterprises, Inc. (Cox)  
E.F. Johnson Company (E.F. Johnson)  
General Communication, Inc. (GCI)  
Geotek Industries, Inc. (Geotek)  
Grand Broadcasting Corporation (Grand)  
GTE Service Corporation (GTE)  
Hardy & Carey (Hardy)  
Illinois Valley Cellular RSA 2 Partnerships (IVC Partnerships)  
In-Flight Phone Corporation (In-Flight)  
Industrial Telecommunications Association, Inc. (ITA)

Liberty Cellular, Inc. (Liberty)  
Lower Colorado River Authority (LCRA)  
McCaw Cellular Communications, Inc. (McCaw)  
MCI Telecommunications Corporation (MCI)  
Metricom, Inc. (Metricom)  
Mobile Telecommunication Technologies Corp. (Mtel)  
Motorola, Inc. (Motorola)  
MPX Systems (MPX)  
National Association of Business and Educational Radio, Inc. (NABER)  
National Association of Regulatory Utility Commissioners (NARUC)  
National Cellular Resellers Association (NCRA)  
National Telephone Cooperative Association (NTCA)  
New Par  
New York State Department of Public Service (New York)  
Nextel Communications, Inc. (Nextel)  
North Pittsburg Telephone Company (NPTC)  
NYNEX Corporation (NYNEX)  
Pacific Bell and Nevada Bell (Pacific)  
Pacific Telecom Cellular, Inc. (PTC)  
Pactel Corporation (Pactel)  
Pactel Paging (Pactel Paging)  
Pagemart, Inc. (Pagemart)  
Paging Network, Inc. (PageNet)  
People of the State of California and the Public Utilities Commission of the State of California  
(California)  
Personal Radio Steering Group Inc. (PRSG)  
Pioneer Telephone Cooperative, Inc., Pioneer Telecommunications, Inc., and O.T.&T.  
Communications, Inc. (Pioneer)  
PN Cellular, Inc. and Affiliates (PNC)  
PTC Cellular (PTC-C)  
Public Service Commission of the District of Columbia (DC PSC)  
Ram Mobile Data USA Limited Partnership (RMD)  
Reed Smith Shaw & McClay (Reed Smith)  
Rig Telephones, Inc. (Rig)  
Roamer One, Inc. (Roamer)  
Rochester Telephone Corporation (Rochester)



Rockwell International Corporation (Rockwell)  
Rural Cellular Association (Rural Cellular)  
Southwestern Bell Corporation (Southwestern)  
Sprint Corporation (Sprint)  
Starsys Global Positioning, Inc. (Starsys)  
Telephone and Data Systems, Inc. (TDS)  
Telocator, The Personal Communications Industry Association (Telocator)  
Time Warner Telecommunications (Time Warner)  
TRW Inc. (TRW)  
United States Telephone Association (USTA)  
US West  
Utilities Telecommunications Council (UTC)  
Vanguard Cellular Systems, Inc. (Vanguard)  
Waterway Communications System, Inc. (Waterway)

**PARTIES FILING REPLY COMMENTS IN GN DOCKET NO. 93-252**

Aeronautical Radio, Inc. (ARINC)  
American Mobile Telecommunications Association, Inc. (AMTA)  
American Paging, Inc. (AmP)  
American Petroleum Institute (American Petroleum)  
American Telephone and Telegraph Company (AT&T)  
AMSC Subsidiary Corporation (AMSC)  
ARCH Communication Group (Arch)  
Association of American Railroads (AAR)  
Bell Atlantic Companies (Bell Atlantic)  
BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular  
Corp. and Mobile Communications Corp. of America (BellSouth)  
Cellular Telecommunications Industry Association (CTIA)  
CenCall Communications Corporation (CenCall)  
Century Cellunet Inc. (Century)  
E.F. Johnson Company (E.F. Johnson)  
General Communication, Inc. (GCI)  
GTE Service Corporation (GTE)  
In-Flight Phone Corporation (In-Flight)  
Industrial Telecommunications Association, Inc. (ITA)  
McCaw Cellular Communications, Inc. (McCaw)  
MCI Telecommunications Corporation (MCI)  
Metricom, Inc. (Metricom)  
Mobile Marine Radio, Inc. (MMR)  
National Association of Business and Educational Radio, Inc. (NABER)  
Nextel Communications, Inc. (Nextel)  
NYNEX Corporation (NYNEX)  
Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)  
Pacific Bell and Nevada Bell (Pacific)  
PacTel Paging (Pactel Paging)  
Pactel Corporation (PacTel)  
Pagemart, Inc. (Pagemart)  
Paging Network, Inc. (PageNet)  
Pennsylvania Public Utility Commission (PA PUC)  
PSC of Nevada (Nevada)

Puerto Rico Telephone Company (PRTC)  
Radiofone Inc. (Radiofone)  
Ram Mobile Data USA Limited Partnership (RMD)  
Roamer One, Inc. (Roamer)  
Rochester Telephone Corporation (Rochester)  
Rural Cellular Association (Rural Cellular)  
RVC Services, Inc., d/b/a Coastel Communications Co. (Coastel)  
SACO River Cellular Telephone company (Saco River)  
Securicor PMR Systems Ltd. (Securicor)  
Southwestern Bell Corporation (Southwestern)  
Sprint Corporation (Sprint)  
Telephone and Data Systems, Inc. (TDS) and United States Cellular Corporation (USCC)  
Telocator, The Personal Communications Industry Association (Telocator)  
TRW Inc. (TRW)  
Two Way Radio of Carolina, Inc. (2-Way)  
United States Telephone Association (USTA)  
US West  
Utilities Telecommunications Council (UTC)  
Waterway Communications Systems, Inc. (Waterway)

## **APPENDIX A**

### **PARTIES FILING COMMENTS IN RM 8012**

#### ***Party (and Short Title)***

Advanced Telecommunications Corporation and LDDS Communications (ATC)  
Allnet Communications Services, Inc. (Allnet)  
ALLTEL Mobile Communications, Inc. (Alltel)  
Ally, Inc., Cellular, Inc., Cellular 7 Partnership, Century Cellunet, Inc., Hiawathaland Cellular Limited Partnership, Marshall Cellular Partnership, Minnesota RSA 9 Limited Partnership, Minnesota RSA10 Limited Partnership, Panhandle Telecommunications Systems, Inc., Rural Cellular Corporation, XIT Cellular (Opposing Group)  
American Telephone and Telegraph Company (AT&T)  
Ameritech, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, and US West, Inc. (RHCs)  
Bell Atlantic (Bell Atlantic)  
BMTC, L.P. (BMTC)  
Cellular Information Systems, Inc. (CIS)  
Cellular Telecommunications Industry Association (CTIA)  
Cellwave, Inc. (Cellwave)  
Centel Cellular Company (Centel)  
Comcast Cellular Communications, Inc. (Comcast)  
Competitive Telecommunications Association (Comptel)  
Dobson Cellular Systems, Inc. (Dobson)  
GTE Service Corporation on behalf of its affiliates, GTE Mobilnet Incorporated and Contel Cellular, Inc. (GTE)  
McCaw Cellular Communications, Inc. (McCaw)  
National Telephone Cooperative Association (NTCA)  
OCOM Corporation (OCOM)  
Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)  
People of the State of California and the Public Utilities Commission of the State of ~~California~~ (California)  
Public Utilities Commission of Ohio (Ohio)  
Pioneer Telephone Cooperative Inc. (PTC) or (Pioneer)  
PMN, Inc. (PMN)

RFB Cellular, Inc. (RFB)  
Rochester Telephone Mobile Communications (Rochester Mobile)  
SNET Cellular, Inc. (SNET) or (SNET Cellular)  
Southwestern Bell Corporation (Southwestern)  
Sprint Communications Company L.P. (Sprint)  
Telephone and Data Systems and United States Cellular Corporation (TDS)  
Unity Cellular Systems, Inc. and Nebraska Cellular Telephone Corporation (Unity)  
Vanguard Cellular Systems, Inc. (Vanguard)  
WilTel, Inc. (WilTel)

**LIST OF PARTIES FILING REPLY COMMENTS IN RM 8012**

Fleet Call, Inc. (Fleet Call)  
GTE Service Corporation on behalf of its cellular affiliates, GTE Mobilnet Incorporated and  
Contel Cellular, Inc. (GTE)  
Horizon Cellular Telephone Company (Horizon)  
McCaw Cellular Communications, Inc. (McCaw)  
MCI Telecommunications Corporation (MCI)  
United States Telephone Association (USTA)

## **APPENDIX B**

### **Initial Regulatory Flexibility Act Analysis**

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA.

#### **Reason for Action**

This rule making proceeding was initiated to secure comment on various proposals for the possible application of equal access and interconnection obligations upon certain commercial mobile radio services. This rule making proceeding also continues the implementation of Sections 3(n) and 332 of the Communications Act, 47 U.S.C. §§ 153(n), 332, as amended by Title VI of the Omnibus Budget Reconciliation Act. The proposals advanced herein are designed to carry out Congress's intent to establish a uniform regulatory framework for all mobile radio services.

#### **Objectives**

Congress has directed the Commission to implement Sections 3(n) and 332, as amended. In accordance with this directive, the Commission seeks to devise a regulatory scheme that will allow for the equitable treatment of comparable mobile services providers, as categorized under the terms of the new legislation. In turn, this will promote regulatory certainty and allow for the enhanced provision of service to the public.

#### **Legal Basis**

The proposed action is authorized under the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), and Sections 3(n), 4(i), 303(r), 332(c), and 332(d) of the Communications Act of 1934, 47 U.S.C. §§ 153(n), 154(i) and 303(r), 332(c), and 332(d), as amended.

#### **Reporting, Recordkeeping and Other Compliance Requirements**

The proposals under consideration in this Notice may impose certain new reporting and recordkeeping requirements on mobile services licensees whose regulatory status has changed from private to commercial as a result of the new legislation. The extent of this increase in burdens will depend on what rules are ultimately adopted.

Federal Rules Which Overlap, Duplicate or Conflict with These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

Many small entities could be affected by the proposals contained in the Notice. Equal access obligations previously applied only to cellular affiliates of Bell Operating Companies. Interconnection obligations have not previously been applied to commercial mobile radio service providers. After evaluating the comments filed in response to the Notice, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

The Notice solicits comment on a variety of alternatives. Any additional significant alternatives presented in the comments will also be considered.

IRFA Comments

We request written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph 153 of this Notice.

**STATEMENT OF  
COMMISSIONER JAMES H. QUELLO**

**Re: Equal Access and Interconnection Obligations Pertaining  
to Commercial Mobile Radio Services**

In response to Congressional action under the 1993 Omnibus Budget Reconciliation Act, the Federal Communications Commission is initiating this proceeding to examine interconnection issues for Commercial Mobile Radio Services. Today we adopt a combined Notice of Inquiry and Notice of Proposed Rule Making ("Notice").

The Notice addresses three fundamental issues: (1) Whether equal access obligations should be imposed on CMRS providers, and, in particular, on non-BOC cellular carriers? (2) Whether interconnection rates, terms and conditions provided by LECs to CMRS providers should be subject to tariff requirements? and (3) Whether CMRS providers should be subject to any obligation to provide interconnection to other CMRS providers. I note that much of the record in this proceeding was developed in response to a pre-existing petition for rule making filed by MCI. It is upon this record that the Notice proffers the sole tentative conclusion, viz., that non-BOC cellular carriers be required to offer access on essentially the same basis that is required of BOC affiliated cellular carriers under the MFJ.

The effect of the previously noted intervening Congressional action to create a comprehensive regulatory structure for the rapidly emerging competitive environment for providers of mobile communications services, however, has not been taken fully into account. Accordingly, it is appropriate that the Commission ask the specific and detailed questions posed in the Notice. I concur in the tentative conclusion only to the extent that it will focus the commentators precisely on the issue in order to more completely develop the record.

My over-riding concern is that we are proposing to impose regulatory structures borne of the MFJ, itself the product of a vastly different market structure, on new and emerging industries such as PCS. I believe that we should be asking how a competitive market for mobile communications will allow us to remove regulatory impediments rather than grafting regulatory stop-gap measures upon a family of services yet to be developed and offered by competitors to the public.



**Separate Statement**

**of**

**Commissioner Andrew C. Barrett**

**Re: CMRS Equal Access and Interconnection Notice**

This Notice tentatively concludes that non-BOC cellular companies should be subject to equal access obligations similar to BOC cellular companies. However, since this record is based on a 1992 MCI petition for rulemaking, it is not exactly current with respect to several actions: 1. Pending legislation to modify MFJ obligations on Bell Operating Companies and GTE; 2. MCI's acquisition of NEXTEL; and 3. Our decision today to license 6 additional broadband PCS licenses to create additional competition to the existing cellular framework. As a result, the rationale for imposing equal access obligations in the context of "bottleneck facility" market power is not apparent here. Nor does there appear to be a future trend toward further consolidation of market power in the wireless area. In fact, given the greater level of competition that could occur, we may decide that there is no basis for imposing MFJ type of equal access obligations on multiple CMRS providers, including cellular. Thus, this tentative conclusion must be challenged in the record, and a thorough assessment of wireless market competition conditions and cost-benefit analysis must occur. The notice encourages comments which analyze the underlying factors used to justify equal access obligations. I look forward to reviewing the record of this proceeding, and the market basis for considering any type of equal access obligation in the CMRS area. Further, the cost of such obligations should be fully assessed by those who think such obligations should be imposed on non-BOC CMRS providers. My goal in this area, is not to impose more regulation on non-BOC entities, in order to ensure that the cost and burden of MFJ restrictions are applied across the board in the CMRS area. Rather, I believe the Commission's goal should be to develop a transition plan away from MFJ restrictions in the wireless area, and bring everyone into relative parity based on the evolution of full competition in the PCS market. Where interconnection obligations with bottleneck BOC LEC facilities are important, I believe the Commission should impose the appropriate regulatory remedy to address this matter. Where there is no issue of interconnection to bottleneck facilities for transport and switching, then I believe there is a higher burden to justify such regulatory requirements between CMRS providers, and between resellers and CMRS providers under Title II.